

UNREPORTED - NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 00-1669

BALBO CONSTRUCTION, INC.;
GERARD CASTOR,

Appellants

v.

UNITED STATES OF AMERICA;
FARMERS HOME ADMINISTRATION;
U.S. DEPARTMENT OF AGRICULTURE

On Appeal from the United States District Court
for the District of the Virgin Islands
(D.C. Civil No. 99-cv-00090)
District Judge: Honorable Thomas K. Moore

Argued May 15, 2001
Before: McKEE, RENDELL, and BARRY, Circuit Judges

(Filed: June 11, 2001)

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MEMORANDUM OPINION

RENDELL, Circuit Judge.

In this appeal, Balbo Construction, Inc., and its president, Gerard Castor (collectively, “Balbo”), ask us to reverse the District Court’s grant of summary judgment in favor of the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture (“FmHA”). The District Court affirmed the FmHA’s determination that Balbo should be debarred from participating in any federal government assistance programs for a period of three years. We will affirm.

Balbo contends that summary judgment was improperly granted because: the District Court failed to state its reasoning; the ruling of the Administrative Law Judge (“ALJ”) was arbitrary and capricious and denied Balbo due process; and FmHA had actually decided to debar Balbo before completing the debarment process.

Balbo acknowledges that the District Court’s review of the ALJ’s ruling addressed whether the FmHA’s determination was arbitrary, capricious, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A), see Kay v. New Jersey Dept. of Health and Human Svcs., 92 F.3d 171, 181 (3d Cir. 1996). Similarly, we examine the FmHA’s action under the same standard in reviewing the District Court’s ruling. Witkowski v. Welch, 173 F.3d 192, 198 (3d Cir. 1999). The District Court had jurisdiction over this matter pursuant to 5 U.S.C. § 701 and 28 U.S.C. § 1331. We have appellate jurisdiction pursuant to 28 U.S.C. § 1291.

As we write for the parties, we need not recount all of the events that led to the debarment decision. However, we do note several critical undisputed facts. After entering into a contract to construct a house for Jerain Fleming, Balbo sought to modify the contract price based on building codes that it had not considered in calculating the price set forth in the contract. Balbo failed to complete the contract in a timely manner and ultimately filed a lien against the property for amounts Balbo believed were due on account of the construction. Also, Fleming, not Balbo, actually performed much of the construction, with Balbo acting as a “conduit” for FmHA funds.

In June 1998, the FmHA sent Notices of Proposed Debarment to Balbo, proposing debarment of both Balbo and Castor for three years pursuant to 7 C.F.R. § 3017.100.

The notice cited to the regulation authorizing debarment and specified that Balbo “refused and failed to complete the work within the time specified in Paragraph B of the contract and has yet to complete the work.” JA 49. The notice also outlined the procedures for Balbo to contest the proposed debarment. Balbo’s attorney did not respond in a timely fashion, but, thirteen days after the deadline to respond, he filed a “Contest of Proposed Debarment.” JA 54-57.

Thereafter, FmHA offered Balbo an opportunity to meet with FmHA officials regarding the debarment and to submit evidence and witnesses at an informal meeting. JA 58. Counsel for Balbo submitted such a request in mid-September. FmHA then gave him thirty days to propose a time and date for the meeting, but Balbo never contacted FmHA to schedule the meeting.

In January, FmHA issued the Notice of Debarment, from which Balbo filed an administrative appeal. The ALJ considered the case and issued a ruling upholding the debarment. Balbo filed an action in the District Court of the Virgin Islands, the United States filed a motion for summary judgment, and the District Court granted the motion by order of May 2, 2000. The record includes the ALJ’s opinion, which consists of a thirteen-page Decision and Order setting forth findings of fact and legal conclusions. The ALJ cited Balbo’s variations from the contract and its failure to follow regulatory procedures that “strike at the heart of” a successful nationwide loan program, and the

imposition of additional costs which affected Fleming's ability to repay. He concluded that Balbo's willful violation of the construction contract, its negotiation of a different contract "on the side," and its demand for additional funds constituted ample grounds for debarment. The ALJ also noted that Balbo had been given several opportunities to meet with FmHA officials but had not taken advantage of these opportunities.

We can find no basis on which to disturb the District Court's grant of judgment affirming the FmHA's action here.

First, the District Court's failure to indicate its reasoning is insignificant in the face of a well-reasoned ruling by the ALJ outlining the relevant facts and the principles applied. Clearly, the District Court agreed with this reasoning and result. Second, there was no arbitrariness or lack of due process on the part of FmHA. Rather, Balbo failed to avail himself of opportunities to challenge the FmHA's action in a timely manner. Due process requires notice and an opportunity to be heard; Balbo never took advantage of the opportunity afforded to him.

Finally, Balbo contends that an FmHA document outlining the grounds for debarment and stating that the FmHA "need only hear him out and promise him a final decision within 30 days" (A 00117) constituted an improper ruling, foreclosing him from a challenge on the merits. The difficulty with this argument is that the memorandum is susceptible to differing interpretations, and we will never know whether Balbo's interpretation should be credited because he never followed proper procedures to be "heard out." Absent some real proof of arbitrary action, we can find no fault in the

FmHA's statement as to how it intended to proceed. We note that the memorandum specifically provides that Balbo will be heard, and there is no indication that it had made up its mind that the ruling that it would make within thirty days would be adverse to Balbo or in disregard of any evidence or argument he might present.

Accordingly, we will AFFIRM the order of the District Court.

TO THE CLERK OF COURT:

Please file the foregoing memorandum opinion.

/s/ Marjorie O. Rendell
Circuit Judge